

## **14 FAM 240**

# **CRITICAL ENVIRONMENT CONTRACTING**

*(CT:LOG-167; 03-07-2014)*  
*(Office of Origin: A/LM)*

## **14 FAM 241 POLICY AND OBJECTIVES**

*(CT:LOG-166; 02-19-2014)*

- a. This subchapter sets forth requirements for planning and executing contracting in support of contingency operations and mission activities in critical environments overseas.
- b. The policies set forth in this subchapter apply to areas that the Department of Defense (DoD) has designated as overseas contingency operations as defined in 10 U.S.C. 101(a)(13).
- c. The Under Secretary for Management (M) may determine that these policies be applied to other specifically designated situations in critical environments.
- d. Summary of general policies:
  - (1) DoD is authorized by Congress to declare contingency operations. Once an overseas contingency operation is declared, certain planning and reporting activities are required by the National Defense Authorization Act for Fiscal Year 2013, Public Law 112-239; Sections 846(b) and 847;
  - (2) Coordination among DoD, the U.S. Agency for International Development and the Department of State is accomplished through the Critical Environment Contract Analytics Staff (A/LM/CECAS);
  - (3) The Department must perform a comprehensive risk assessment and develop a risk mitigation plan addressing operational risks associated with contractor performance of critical functions no later than six months after the commencement or designation of a contingency operation outside the United States that includes or is expected to include combat operations, when:
    - (a) The operation is expected to continue for more than one year;
    - (b) The total amount of obligations for Department contracts for support of operation is expected to exceed \$250 million; and
    - (c) If a risk assessment and risk mitigation plan has not been previously performed, the Department has 60 days after the date the operation has actually continued for more than one year, or after the Department's total amount of obligations for contracts for support of

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the operation actually exceeds \$250 million.

- (4) Resource requirements for Office of Acquisitions Management (A/LM/AQM) contracting officers to support contingency contracting are estimated by the Head of Contracting Activity (HCA). Financial estimates for contract award support are included in and managed under the A/LM/AQM Working Capital Fund (WCF);
- (5) Resource requirements for contingency program managers, contracting officer's representatives (CORs), including property administrators and plant clearance officers are estimated by the responsible funding bureaus. These resource requirements are included in financial estimates provided to the Bureau of Budget and Planning (BP) and the Office of U.S. Foreign Assistance Resources (F), as applicable;
- (6) The Department's five year Acquisition Workforce Human Capital Plan is coordinated by the Office of the Procurement Executive (A/OPE) in conjunction with the Bureau of Human Resources (HR). A/LM/AQM estimates requirements for contracting officers and contract specialists. Bureaus estimate requirements for program managers and CORs. HR uses the input from the Acquisition Workforce Human Capital Plan and funding bureaus to support the development of the Department's Five Year Workforce and Leadership Succession Plan; and
- (7) Detailed assessments of the necessity and sustainability of capital foreign assistance projects, above designated thresholds, in support of contingency operations, and which are for the benefit of the host government, must be documented. Section 1273(c) of Public Law 112-239 provides waiver authority by the Secretary of State. Contact A/LM/CECAS for coordination of any waiver request.

## **14 FAM 241.1 Scope and Applicability**

*(CT:LOG-166; 02-19-2014)*

These policy requirements apply to all Department of State employees involved in contracting situations in overseas contingency and critical environments. This includes all bureaus and offices involved in all phases of acquisition and is specifically not limited to just the contracting offices.

## **14 FAM 241.2 Authorities**

*(CT:LOG-166; 02-19-2014)*

Authorities include the National Defense Authorization Act for Fiscal Year 2013, Public Law 112-239, which requires the Department to issue guidance regarding data collection (Section 844), perform comprehensive risk assessment, develop risk mitigation plan (Section 846), submit reports to Congress on overseas

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contingency contract support (Section 847) and conduct sustainability assessments on capital projects (Section 1273).

## **14 FAM 241.3 Responsibilities**

*(CT:LOG-167; 03-07-2014)*

- a. The Secretary of State *vests* contingency *operation contract* management responsibility *in* the Under Secretary for Management (M). The Under Secretary is responsible for major contingency *contracting* policy decisions.
- b. The 41 U.S.C. 1702(b)(3)(F) requires that the Chief Acquisition Officer (CAO) be responsible for advising the Department on the applicability of relevant policy on the contracts of the Department for overseas contingency operations and ensuring compliance of the contracts and contracting activities of the Department with such policies.
- c. Acquisition policy is promulgated by A/OPE.
- d. A/LM/CECAS is responsible for developing, coordinating, and implementing Department-wide risk assessments and risk management plans for contractor support in designated contingencies, or to address needs in other critical environments. The staff coordinates the operational aspects of contracting in contingency operations with appropriate geographic and functional bureaus.

## **14 FAM 241.4 Definitions**

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**Contingency operation:** See 10 U.S.C. 101(a)(13) for the exact definition. This generally refers to a military operation that (A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or (B) results in the call or order to, or retention on, active duty of members of the uniformed services under any provision of law during a war or during a national emergency declared by the President or Congress.

**Private security functions:** See the exact definition in Public Law 110-181 Section 864 and associated regulation 48 CFR 25.302-2. This generally means activities engaged in by a contractor under a covered contract including guarding personnel, facilities, or property of a Federal agency, the contractor or subcontractor, or a third party. It includes any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of the contract.

## **14 FAM 242 DECLARATION OF A CONTINGENCY AND ESTABLISHMENT OF COORDINATION**

*(CT:LOG-166; 02-19-2014)*

The Department will be notified via Department of Defense (DoD) Executive Secretary Memorandum of the formal declaration by the Secretary of Defense of a contingency operation as defined in 10 U.S.C. 101(a)(13). The Under Secretary for Management (M) may also issue a determination that the policies of this chapter apply to a specific situation that is not a DoD-declared contingency.

## **14 FAM 243 CONTINGENCY CONTRACT TRACKING AND OVERSIGHT**

### **14 FAM 243.1 Collection of Data**

*(CT:LOG-166; 02-19-2014)*

- a. Public Law 112-239, Section 844 requires the Department of State to issue guidance regarding data collection on contract support for contingency operations outside the United States that involve combat operations, not later than a year after the January 2, 2013 enactment of Public Law 112-239. The required guidance is contained in this section. The Deputy Assistant Secretary, Office of Logistics Management (A/LM) is responsible for contracting data collection and report creation.
- b. The law requires the Department to have the capability to collect and report, at a minimum, the following data regarding such contract support:
  - (1) The total number of contracts entered into as of the date of any report. The information is collected by A/LM/AQM from the Federal Procurement Data System (FPDS) based on sorting by place of performance and date of award. The data from FPDS is compared to data from the Synchronized Pre-Deployment Operational Tracker (SPOT) to ensure accuracy;
  - (2) The total number of such contracts that are active as of such date. The information is collected by A/LM/AQM from the FPDS based on sorting by place of performance and period of performance;
  - (3) The total value of contracts entered into as of such date. The information is collected by A/LM/AQM from the FPDS based on sorting by place of performance, date of award and descending value;
  - (4) The total value of such contracts that are active as of such date. The information is collected by A/LM/AQM from the FPDS based on sorting by place of performance, period of performance and descending dollar value;
  - (5) An identification of the extent to which the contracts entered into as of such date were entered into using competitive procedures. The information is collected by A/LM/AQM from the FPDS based on sorting by place of performance, date of award and competition status;

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- (6) The total number of contractor personnel working under contracts entered into as of the end of each calendar quarter during the one-year period ending on such date. The information is collected by A/LM/AQM based on the number of contractor personnel registered in the SPOT system used to record contractor personnel deploying to a contingency area;
- (7) The total number of contractor personnel performing security functions under contracts entered into as of the end of each calendar quarter during the one-year period ending on such date. The information is collected by A/LM/AQM from the SPOT database. Job titles within SPOT categorize an individual as a security contractor; and
- (8) The total number of contractor personnel killed or wounded under any contracts entered into. The information is entered into the SPOT database by the contractor. Serious incident reports involving contractors are monitored by posts' regional security officers and may be used to assist in verification of data. Company administrators and assigned CORs are responsible for ensuring data is entered into the SPOT database.

## **14 FAM 243.2 Requirements Development and Management**

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- a. Requirements are defined by the funding bureau. For example: Overseas Buildings Operations defines construction requirements and Diplomatic Security defines security requirements.
- b. Requirements must be evaluated for sustainability and ability to achieve results. In contingency or critical environments, programs must be assessed to determine if sufficient infrastructure and expertise will be available to maintain the contracted effort. Performance metrics must be developed to ensure achievement of results.
- c. Foreign Assistance requirements over \$10 million will be coordinated with other agencies operating in the contingency environment to ensure no duplication or overlap of requirements. A coordinating working group will be established by the Office of U.S. Foreign Assistance Resources (F) within 120 days of a contingency declaration.
- d. A determination must be made as to whether requirements must be met through performance by government personnel or through contractor support. The requirements package must contain an assessment pursuant to Procurement Information Bulletin (PIB) 2012-11, Preventing Contractor Performance of Inherently Governmental Functions, indicating whether the task is inherently governmental and must be performed by government personnel, or if it can be achieved through contractor support. The requirements package must consider any risks to the government from the use of contractors, as indicated by the risk assessment and any risk mitigation plan, thus requiring

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the use of government personnel instead of contractor support.

## **14 FAM 243.3 Sustainability Assessments For Certain Capital Projects In Connection With Overseas Contingency Operations**

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- a. Public Law 112-239, Section 1273 requires initial sustainability assessments of certain foreign assistance projects, along with semi-annual reporting of these assessments to Congress.
- b. Please review Public Law 112-239, Section 1273 for specific details on what the assessments must evaluate to document the necessity and sustainability of the project.
- c. The Office of U.S. Foreign Assistance Resources (F) manages the semi-annual Congressional reporting process, while individual project offices and posts are responsible for preparing the sustainability assessments, per 18 FAM 057.8.

## **14 FAM 243.4 Acquisition Planning**

*(CT:LOG-166; 02-19-2014)*

- a. Written acquisition planning is required pursuant to Federal Acquisition Regulation (FAR) 48 CFR 7.105 for all acquisitions over \$5 million. The required contents of acquisition plans are specified in the FAR at 48 CFR 7.105.
- b. Acquisition plans for contingency operations require special attention in several areas: interagency acquisition support; avoiding conflicts of interest; determining the appropriateness of performance by contractor personnel; risks of contractor support; life support to be provided by post; and contract administration. These areas are discussed further below. A/LM/CECAS is charged with facilitating planning in a given contingency or critical environment as it relates to evaluation of risk, risk mitigation strategies, interagency liaison, and contract administration of contractor support.

## **14 FAM 243.5 Solicitation and Award of Contracts**

*(CT:LOG-166; 02-19-2014)*

- a. The Department of State acquisition strategy for supporting contracting operations relies on "reach-back" centralized contracting support established within the Washington, DC acquisition management office A/LM/AQM, in coordination with bureaus and posts. A/LM/AQM also utilizes the Regional Procurement Support Offices in Ft. Lauderdale, Florida and Frankfurt, Germany, as needed. This same strategy is used to support contingency or critical environment contracting operations.



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- b. The need for other forward deployed acquisition support offices in the country of conflict or in neighboring countries will be determined by the CAO in consultation with the A/LM Deputy Assistant Secretary and the Procurement Executive. A written determination will be made by the CAO on the establishment of any forward deployed support offices.
- c. A/LM/AQM will periodically assess the staffing required to support operations. The Working Capital Fund provides a method of increasing staffing in response to increased acquisition workload. Acquisition staffing will be estimated as part of the annual Acquisition Workforce Human Capital Plan. Tools to support increases in acquisition support include an on-going acquisition intern program, pre-approved acquisition position descriptions, identification of retired acquisition professionals available for assignment (both Foreign Service and Civil Service) and open staffing announcements.
- d. The efficiency and effectiveness of interagency support options such as acquisition support under the Economy Act (31 U.S.C. 1535) or other authorities should be part of planning.
- e. The A/LM/CECAS will act as the Interagency Acquisition Agreement advisor/coordinator for the Department during contingency operations. A/LM/CECAS will follow appropriate FAR requirements including 48 CFR 2.101 - Definitions, 48 CFR 17.5 - Interagency Acquisitions plus the Department PIB 2013-03, Acquisition Agreements and PIB 2014-05, Non-Acquisition Interagency Agreements, as applicable.

## **14 FAM 244 CRITICAL ENVIRONMENT CONTRACTING MANAGEMENT**

### **14 FAM 244.1 Contingency Contract Administration**

#### **14 FAM 244.1-1 Planning**

*(CT:LOG-166; 02-19-2014)*

- a. Bureaus with contingency contracting requirements must plan for contract administration from the start of requirements determination and should coordinate closely with A/LM/CECAS. Procurements must describe a contract administration plan as an element of the acquisition plan. Adequate funding and resources must be identified to support the contract administration plan, which must address any Department-wide risk mitigation strategies adopted for a particular contingency or critical environment. Assistant Secretaries of bureaus with service contract requirements that will exceed \$25 million per year must certify that adequate financial and other resources have been identified to support the contract, and must continue to validate that sufficient resources exist on their bureau's annual Statement of Assurance to the

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- b. Overall contract administration strategy for the contingency operation should be a joint assessment of the regional bureau, bureaus with operational responsibility, acquisitions (A/LM/AQM), A/LM/CECAS, and A/OPE. The regional bureau has coordinating leadership. Strategy should consider the benefits of centralizing contract administration such as establishing a contract administration office either in-country or in a neighboring country.
- c. Contracts must be promptly evaluated in the government-wide Contractor Performance Assessment Reporting System (CPARS) in accordance with standard Department procedures.

## **14 FAM 244.1-2 Training**

*(CT:LOG-166; 02-19-2014)*

- a. A/OPE defines training and experience requirements for CORs. Bureaus with operational responsibility must define any specialized training or experience requirements to ensure effective contract administration oversight, such as requirements for subject matter expertise. For example, a bureau managing a food and fuel supply contract may decide to require fuel testing plus food safety experience and training for CORs monitoring the contract. This training would supplement training in COR duties and knowledge of FAR required by A/OPE.
- b. Bureaus should consider acquiring oversight training and/or oversight support from other agencies with specialized experience such as DoD's Defense Contract Management Agency, Defense Logistics Agency, or other agencies via Interagency Acquisition Agreements in accordance with Department procedures.
- c. Previous contingency operations were supported by contractors using imported third country nationals. Contingency conditions may increase the risk of Trafficking in Persons (TIP) violations. Contracting officers and CORs should review TIP monitoring guidance and create appropriate mitigation and oversight strategies.
- d. Existing COR training covers normal invoice processing. Complex programs in contingency environments may need to develop program specific invoice review and processing guidance due to the creation of financial offices or processes to support the contingency or the need to coordinate payments with other agencies.

## **14 FAM 244.1-3 Deployment and Operations**

*(CT:LOG-166; 02-19-2014)*

- a. Contractors are required to provide their own life support unless otherwise authorized in their contracts. Contracting officers will not provide life support authorization without express, written approval of the management counselor



at the host post.

- b. If authorized by the host post, contractor life support authorization must be specified in the contract and implemented through Letters of Authorization (LOAs) issued through SPOT for the individual contractor employees.
- c. SPOT is the official record for tracking contractor deployment in contingency operations as well as the means for documenting prior authorization of life support.
- d. Outgoing CORs should provide either a written or oral debriefing of contractor performance and outstanding issues prior to departure to their successors.
- e. Contractors are responsible for ensuring their employees complete all required training before deployment to the contingency area. A/LM/CECAS is responsible for identifying any required standard training for a specific contingency or critical environment that all contractors must acquire.

## **14 FAM 244.2 Contractor Performance Evaluation**

*(CT:LOG-166; 02-19-2014)*

- a. Program evaluation is performed in accordance with guidance located at 18 FAM 300, Program Evaluation Policy. Contracts must be written with performance metric monitoring as a goal to assist in determining whether contingency contracts should be continued, revised or terminated.
- b. Program offices managing contracts in support of a contingency that exceed \$25 million or have been identified as high impact, such as contracts for security, must conduct regular and comprehensive program reviews at least quarterly. Program reviews are chaired by the Government program manager and should include the contracting officer and COR, if different than the program manager. Agendas, minutes and tracking of action items must be performed.

## **14 FAM 244.3 Risk Assessment on Use of Contractors to Support Contingency Operations**

*(CT:LOG-166; 02-19-2014)*

- a. As required by Public Law 112-239, Section 846, and subject to paragraphs c and d below, not later than six months after the commencement or designation of a contingency operation outside the United States that includes or is expected to include combat operations, the Department, through A/LM/CECAS, must perform a comprehensive risk assessment and develop a risk mitigation plan for operational risks associated with contractor performance of critical functions in support of the operation for the Department.
- b. A/LM/CECAS is responsible for developing, coordinating, and implementing a Department-wide contracting risk management plan for a designated

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contingency. The Under Secretary for Management approves the overall assessment and mitigation plans. Bureau Assistant Secretaries are responsible for generating and reviewing plans for work in their functional or geographic area of responsibility.

- c. EXCEPTIONS. Except as provided in paragraph d, a risk assessment and risk mitigation plan is not required under paragraph a for an overseas contingency operation if—
  - (1) The operation is not expected to continue for more than one year; and
  - (2) The total amount of obligations for contracts for support of the operation for the covered agency is not expected to exceed \$250 million. Once obligation thresholds are met, A/LM/CECAS will initiate the Department-wide process for the comprehensive risk assessment and risk mitigation plan.
- d. TERMINATION OF EXCEPTIONS. Notwithstanding paragraph c, the Department must perform a risk assessment and develop a risk mitigation plan for an overseas contingency operation for which a risk assessment and risk mitigation plan has not been performed previously, not later than 60 days after the date on which—
  - (1) The operation has continued for more than one year; or
  - (2) The total amount of obligations for contracts for support of the operation for the covered agency exceeds \$250 million.

## **14 FAM 244.4 Comprehensive Risk Assessments**

*(CT:LOG-166; 02-19-2014)*

Public Law 112-239, Section 846(c) requires the comprehensive risk assessment must consider, at a minimum, risks relating to the following:

- (1) The goals and objectives of the operation (such as risks from contractor behavior or performance that may injure innocent members of the local population or offend their sensibilities);
- (2) The continuity of the operation (such as risks from contractors refusing to perform or being unable to perform when there may be no timely replacements available);
- (3) The safety of military and civilian personnel of the United States if the presence or performance of contractor personnel creates unsafe conditions or invites attack;
- (4) The safety of contractor personnel employed by the Department of State;
- (5) The managerial control of the Department over the operation (such as risks from over-reliance on contractors to monitor other contractors or inadequate means for Government personnel to monitor contractor

performance);

- (6) The critical organic or core capabilities of the Department, including critical knowledge or institutional memory of key operations areas and subject-matter expertise; and
- (7) The ability of the Government to control costs, avoid organizational or personal conflicts of interest, and minimize waste, fraud, and abuse.

## **14 FAM 244.5 Risk Mitigations Plans**

*(CT:LOG-166; 02-19-2014)*

Public Law 112-239, Section 846(d) requires a risk mitigation plan that must include, at a minimum, the following:

- (1) For each high-risk area identified in the comprehensive risk assessment:
  - (a) Specific actions to mitigate or reduce such risk, including the development of alternative capabilities to reduce reliance on contractor performance of critical functions;
  - (b) Measurable milestones for the implementation of planned risk mitigation or risk reduction measures; and
  - (c) A process for monitoring, measuring, and documenting progress in mitigating or reducing risk.
- (2) A continuing process for identifying and addressing new and changed risks arising in the course of the operation, including the periodic reassessment of risks and the development of appropriate risk mitigation or reduction plans for any new or changed high-risk area identified.

## **14 FAM 244.6 Critical Functions**

*(CT:LOG-166; 02-19-2014)*

Public Law 112-239, Section 846(e) requires critical functions to include, at a minimum, the following:

- (1) Private security functions, as that term is defined in section 864(a)(6) of the National Defense Authorization Act for Fiscal Year 2008 (10 U.S.C. 2302 note);
- (2) Training and advising U.S. government personnel, including military and security personnel, of a host nation;
- (3) Conducting intelligence or information operations;
- (4) Any other functions that are closely associated with inherently governmental functions, including the functions set forth in the FAR at 48 CFR 7.503(d); and
- (5) Any other functions that are deemed critical to the success of the

operation.

## **14 FAM 244.7 Program Risk Management**

*(CT:LOG-166; 02-19-2014)*

- a. In addition to the requirement for a risk assessment on the use of contractor support required by 14 FAM 243.3, individual bureaus will manage individual program risk using their established procedures. All contracts exceeding \$25 million in support of a contingency operation must have an individual program risk assessment and program risk planning.
- b. Individual program risk assessment and planning should include a contractor self-assessment of program risks and a mitigation plan updated semi-annually.
- c. Programs or contracts in support of contingency operations exceeding \$25 million must schedule at least quarterly program reviews to determine that contractor performance is achieving objectives. Metrics, in accordance with FAM Program Evaluation guidelines, should be used to assess effectiveness. Program review frequency should be based on the nature and complexity of the program. Contractor performance must be documented in the government-wide contractor performance assessment system.
- d. If a program or contract is determined to be at risk of failure to achieve delivery; or meet cost or performance objectives, the finding must be presented to the Bureau Assistant Secretary, A/LM Deputy Assistant Secretary, CAO, and the Under Secretary for Management.

## **14 FAM 245 INTERAGENCY COORDINATION AND TRANSITION PLANNING**

*(CT:LOG-166; 02-19-2014)*

- a. Interagency coordination is accomplished by A/LM/CECAS.
- b. All interagency acquisition agreements are documented in accordance with Department procedures.
- c. Copies of agreements and supporting documentation are maintained within an environment shared by the agencies supporting the contingency operation so that the history of transactions is maintained even though personnel rapidly rotate through a contingency environment. A special Transition Coordinating Working Group manages transition planning activities.
- d. Transition planning for acquisition support must consider identifying the need for continuing life support such as housing, food, medical and transport, among other services.

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